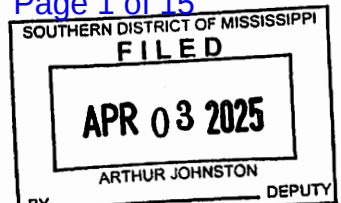


AO 241 (Rev. 09/17)

1:25cv105 HSO-LGI

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY



United States District Court		District: <u>Southern District of MS</u>
Name (under which you were convicted): <u>NERY ALEXANDER GARCIA-MONROY</u>		Docket or Case No.: <u>B2401-2022 041/1</u>
Place of Confinement: <u>South Miss CORRECTIONAL INSTITUTE</u>	Prisoner No.: <u>242573</u>	
Petitioner (include the name under which you were convicted): <u>NERY ALEXANDER GARCIA MONROY</u>	Respondent (authorized person having custody of petitioner) v. <u>MDOC (BURL CAIN)</u>	
The Attorney General of the State of:		

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging:
1st Judicial District - HARRISON County MS 39501
Gulfport MS
- (b) Criminal docket or case number (if you know): B2401-2022 041/1
- (a) Date of the judgment of conviction (if you know): 04/11/2021 - Arrest Date
- (b) Date of sentencing: ON OR About 09/2022 02-22/2023
Processed
- Length of sentence: 20 YEARS
- In this case, were you convicted on more than one count or of more than one crime? ☐ Yes ☒ No
- Identify all crimes of which you were convicted and sentenced in this case: SEXUAL BATTERY
N/A
N/A
- (a) What was your plea? (Check one)

<input type="checkbox"/> (1) Not guilty	<input type="checkbox"/> (3) Nolo contendere (no contest)
<input checked="" type="checkbox"/> (2) Guilty	<input type="checkbox"/> (4) Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? SEXUAL BATTERY

N/A N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

☐ Jury ☒ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☐ Yes ☒ No

9. If you did appeal, answer the following:

(a) Name of court: _____

(b) Docket or case number (if you know): _____

(c) Result: _____

(d) Date of result (if you know): _____

(e) Citation to the case (if you know): _____

(f) Grounds raised: _____

(g) Did you seek further review by a higher state court? ☐ Yes ☒ No

If yes, answer the following:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Result: _____

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(4) Date of result (if you know):

N/A

(5) Citation to the case (if you know):

N/A

(6) Grounds raised:

N/A

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes☒ No

If yes, answer the following:

(1) Docket or case number (if you know):

B2401-2022 041/1

(2) Result:

NEVER got A ANSWER from Court

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a)

(1) Name of court:

1st Judicial District Circuit Court

(2) Docket or case number (if you know):

B2401-2022 041/1

(3) Date of filing (if you know):

08-31-2023 Date Stamped & Filed

(4) Nature of the proceeding:

NONE

(5) Grounds raised:

USCA 1326

United States VS LARA-Aceves

C.A.9(CA1) 1999 183 F.3d 1007

CONSTITUTIONAL LAW

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes☒ No

(7) Result:

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(8) Date of result (if you know):

No HEARING

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes

☒ No

(7) Result:

(8) Date of result (if you know):

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court:

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

(4) Nature of the proceeding:

(5) Grounds raised:

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No

(7) Result: _____

(8) Date of result (if you know): _____

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☐ Yes ☒ No(2) Second petition: ☐ Yes ☒ No(3) Third petition: ☐ Yes ☒ No(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE:

Executive Action Constitutionality 1326

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

PRESIDENT Trump Signed Executive order to deport back to home country - Honduras

(b) If you did not exhaust your state remedies on Ground One, explain why:

Federal Executive Order States don't entertain Petition for deportation.

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(c) **Direct Appeal of Ground One:**(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?☐ Yes ☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: FOR DEPORTATIONName and location of the court where the motion or petition was filed: 1st Judicial district CourtDocket or case number (if you know): B2401-2022-041/1Date of the court's decision: NO decision givenResult (attach a copy of the court's opinion or order, if available): N/A(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☒ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): N/A

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): N/A(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: N/A

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

GROUND TWO:

PROVISION of illegal Immigration Reform And Immigration Act (IRIRA) which expanded definition of term Aggravated felony

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

*I AM A PRISONER AT S M C I IN LEAKSVILLE MS 39451
MDOC # 242573 AND I HAVE A AGGRAVATED FELONY AND I
AM RESPECTFULLY REQUESTING TO BE DEPORTED BACK TO MY HOME
COUNTRY (HONDURAS)*

(b) If you did not exhaust your state remedies on Ground Two, explain why:

*Executive Federal Order
Signed by President Trump*

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes

☒ No

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes

☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

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Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☒ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two : _____

GROUND THREE:

U.S. V LAZO ORTIZ, S.D. Fla (1996), 954 F Supp. 254, Affirmed - 136 F. 3d 1282 Aliens Immigration Act

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Executive Order Signed by Trump And the Alien Immigration Act And Citizenship Act

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(b) If you did not exhaust your state remedies on Ground Three, explain why:

Federal Executive OrderState Court does not entertain(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

☐ Yes☒ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes☒ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

None

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

GROUND FOUR:

U.S. v Corona-Garcia (CA1) C.A. 9 (2000)
210 F.3d 973 Alien Immigration And Citizenship Act 795

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Please deport me back to my home Country (Honduras)
Never To Return my family needs me home

(b) If you did not exhaust your state remedies on Ground Four, explain why:

No state remedies Available
for federal Executive Order Signed by President Trump

(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

☐ Yes☒ No

(2) If you did not raise this issue in your direct appeal, explain why:

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes☒ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

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Name and location of the court where the motion or petition was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(3) Did you receive a hearing on your motion or petition?

☐ Yes ☒ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes ☒ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes ☒ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

None

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

Federal Executive Order

(c) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four:

None

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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☒ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

Federal Executive order Signed by President Trump Please deport me - Turn me over to ICE's Custody

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☒ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

Petition for deportation from Aug 2023
Never Answered

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing:

Public defender

(b) At arraignment and plea:

Public defender

(c) At trial:

(d) At sentencing:

Public defender

(e) On appeal:

N/A

(f) In any post-conviction proceeding:

None

(g) On appeal from any ruling against you in a post-conviction proceeding:

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

N/A

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☒ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.*

President Trump Signed Executive Order After Coming
 Into Office In January 2025 NO Barr
 Please deport me back to my home Country

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** NO GANG Affiliation * PLEASE deport BACK to my
Home Country. HONDURAS*

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

Please deport me back
to home Country.

or any other relief to which petitioner may be entitled.

N/A
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on 04-02-2025 (date).

Nery Garcia
Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.

